IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13/09/2002

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THE HONOURABLE MR. JUSTICE P.K. MISRA

W.P.NO. 2671 OF 1999

Tmt. Susila Sankar .. Petitioner

-Vs-

1. The Chairman,
Tamil Nadu Housing Board,
Anna Salai, Nandanam,
Chennai 600 035.

2. The Executive Engineer,
Special Division – I,
Anna Nagar Western Extension,
Tamil Nadu Housing Board,
Chennai 600 101. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Mandamus as stated therein.

For Petitioner : Mr. G.Rajasekharan

For Respondents : Mr.D. Veerasekaran &
Mr.S. Kasikumar

:O R D E R

Heard the learned counsels appearing for the parties. In this writ petition, the petitioner has prayed for a direction to the respondents to refund the excess amount of Rs.38,381/- which had been collected from her husband on 28.6.1988 with appropriate interest and damages.

2. Petitioner was allotted a plot of land in Mogappair Village by the first respondent for Rs.18,000/-. At the time of allotment, a sum of Rs.5,000/- had been paid. Subsequently a sum of Rs.10,000/- was paid on 30.8.1983. In November, 1983 the petitioner was called upon to pay Rs.1,052/- towards the balance tentative cost which was paid on 30.3.1984. Thereafter the Housing Board issued no objection letter permitting the petitioner to put up residential construction. In the meantime, the Housing Board had called upon the petitioner to make a further deposit of Rs.25,000/- towards alleged difference of price between the final costs and tentative costs. Similar notice issued to other allottees was challenged in

W.P.Nos.12479/84, 4593/85, 11824/85, 8790/86 and 16209/89. It is stated that the petitioner was one of the petitioners in W.P.No.12479 of 1984. All the writ petitions were heard and allowed by judgment dated 8.4.1993, quashing the demand relating to additional payment. However, during pendency of the writ petition, the petitioner who had been served with subsequent notice dated 24.6.1988 demanding payment of a further sum of Rs.38,381/-, had paid such amount, obviously without prejudice to her contentions in the pending writ petition.
After the writ petition filed by the Association was allowed, notice was issued to the Board to refund the amount and the same having been not done, the petitioner approached the District Consumer Forum. The District Consumer Forum allowed the application and directed the Board to refund the excess amount. But, the matter was carried to the State Consumer Forum, which opined that the persons who were claiming the refund of the amount were not

consumers and therefore, the dispute before the State Consumer Forum was not maintainable. Thereafter the petitioner filed the present writ petition for a direction to the respondents to refund the amount.

3. A counter affidavit has been filed on behalf of the respondents. It has been stated that the petitioner having paid the amount voluntarily, cannot seek refund of the amount. The respondents have also taken the plea of limitation and also pleaded that in the meantime the petitioner having already sold the plot to a third party, cannot claim refund of the amount from the Housing Board. The respondents have also taken the plea that once the sale deed is executed, the contract between the Housing Board and the petitioner is closed.

4. It is surprising that the Housing Board has chosen to take such technical pleas in order to defeat the claim of refund. It is even very surprising to know that the Housing Board, even after notice for enhanced amount had been quashed by the High Court, had chosen to carry on the matter in appeal on some technical ground even though the District Consumer Forum had directed refund. It is of course true that the State Consumer Forum has allowed the appeal. However, that will not stand in the way of refunding the amount to the petitioner.

5. The facts narrated clearly indicate that the notice for payment of enhanced amount has been challenged by the petitioner as well as others. Even during pendency of such writ petition, further notice was issued to pay the enhanced amount of Rs.25,000/- along with interest and the petitioner was called upon to pay a sum of Rs.38,381/- which has been paid by the petitioner in June, 1988 during pendency of the writ petition. Payment of such amount whether voluntary or not, must be taken without prejudice to the contention and subject to the result of the writ petition. When a writ petition was pending within the knowledge of the respondents, they cannot derive any benefit from the mere fact that subsequently the applicant had paid the amount demanded by them. Even otherwise it appears that many other persons have filed writ petitions for refund of the amount and direction had been given for refund of the amount by the single Judge which were challenged

in appeal and the appeals were also dismissed.

6. Keeping in view all these aspects, there is no iota of any merit in the submission of the learned counsel for the respondents that the amount should not be refunded and accordingly, I give a direction that a sum of Rs.38,381/-collected from the petitioner on 28.6.1988 should be refunded.

7. Learned counsel for the petitioner has submitted that the amount should be refunded with a reasonable interest. Learned counsel appearing for the respondents has submitted that in the Writ Appeal there was no direction to pay interest, but it was observed that the amount if not paid in four months, interest at the rate of 6% should be paid thereafter. It is surprising that even after such a decision was rendered, the respondents have not refunded the amount to the present petitioner. At least there is no justification not to grant interest from the date of disposal of the Writ Appeal filed by the Housing Board, which was dismissed on 9.12.1999. Admittedly by that time the present writ petition has been filed and the matter was within the knowledge of the respondents that the order of refund in the connected matter has been upheld in the appeal. I therefore direct that a sum of Rs.38,381/- should be refunded with interest at the rate of 6% within a period of two months from to-day and the interest should be calculated from 1.1.2000. If the amount is not paid within the stipulated period, such amount of Rs.38,381/- shall carry interest at the rate of 10% thereafter. The writ petition is allowed accordingly.
The petitioner has been unnecessarily made to run from pillar to post. Therefore, I also think it is a fit case where the respondents should be directed to pay a consolidated sum of Rs.5,000/- (Rupees five thousand only) towards costs.

Index : Yes
Internet : Yes
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To

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